

No. 23-1078

In the
United States Court of Appeals
for the Fourth Circuit

B.P.J., by her next friend and mother, **HEATHER JACKSON**,
Plaintiff-Appellant,
v.
WEST VIRGINIA STATE BOARD OF EDUCATION, *et al.*,
Defendants-Appellees,
and
THE STATE OF WEST VIRGINIA, *et al.*,
Intervenors-Appellees

On Appeal from the United States District Court
for the Southern District of West Virginia (No. 2:21-cv-00316)

**AMICUS BRIEF OF THE TREVOR PROJECT
IN SUPPORT OF APPELLANT AND REVERSAL**

Shireen A. Barday
Mark C. Davies
PALLAS PARTNERS (US) LLP
75 Rockefeller Plaza
New York, NY 10019
(212) 970-2300
shireen.barday@pallasllp.com
mark.davies@pallasllp.com

Abbey Hudson
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
ahudson@gibsondunn.com

Emily Maxim Lamm
Maxwell A. Baldi
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 955-8500
elamm@gibsondunn.com
mbaldi@gibsondunn.com

Counsel for Proposed Amicus Curiae The Trevor Project.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, The Trevor Project is a 501(c)(3) organization. The Trevor Project does not have a parent corporation. The Trevor Project is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENTi

TABLE OF AUTHORITIES iii

INTEREST OF THE TREVOR PROJECT1

ARGUMENT.....3

 I. H.B. 3293 Places Transgender Women And Girls At
 Risk By Exacerbating The Discrimination They Face
 Just For Being Who They Are.....6

 II. The Trevor Project’s Data Reflect The Negative Effects
 Of Policies Denying Transgender Youth Access To The
 Benefits Of Participation On Sports Teams That
 Correspond With Their Gender Identity.12

 III. The Trevor Project’s Experiences Are Consistent With
 Social Science Research Conducted By Other Leading
 Organizations.....18

 IV. Leading National Sports Organizations Recognize The
 Importance Of Including Transgender Women And
 Girls And Of Not Policing Their Bodies.25

CONCLUSION30

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Edmo v. Corizon, Inc.</i> , 935 F.3d 757 (9th Cir. 2019)	3
Statutes	
H.B. 3293 (codified at W. Va. Code § 18-2-25d)	3, 27
Other Authorities	
Joanna Almeida et al., <i>Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation</i> , 38 J. YOUTH & ADOLESCENCE 1001 (2009)	10, 19
AP News, <i>WVU researchers collecting data on gender-diverse identities</i> (Aug. 9, 2022)	19
APA, <i>Guidelines for Psychological Practice with Transgender and Gender Nonconforming People</i> , 70 AM. PSYCHOLOGIST 832 (2015)	24
Ryan D. Burns et al., <i>Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey</i> , 127 PERCEPTUAL & MOTOR SKILLS 448 (2020)	22
Erin E. Buzuvis, <i>Transgender Student-Athletes and Sex-Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics</i> , 21 SETON HALL J. SPORTS & ENT. L. 1 (2011)	21
Derrick Clifton, <i>Anti-Trans Sports Bills Aren’t Just Transphobic — They’re Racist, Too</i> , THEM (Mar. 31, 2021)	28

COMM. ON ADOLESCENCE, <i>Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth</i> , 132 PEDIATRICS 198 (2013)	24
Jonah P. DeChants et al., <i>“I Get Treated Poorly in Regular School—Why Add To It?”: Transgender Girls’ Experiences Choosing to Play or Not Play Sports</i> , TRANSGENDER HEALTH (2022)	9
Lily Durwood et al., <i>Mental Health and Self-Worth in Socially Transitioned Transgender Youth</i> , 56 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 116 (2017)	20, 23, 24
Rochelle M. Eime et al., <i>A Systematic Review of the Psychological and Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health through Sport</i> , 10 INT’L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY 1 (2013)	21
GLAAD Media Reference Guide - Transgender, GLAAD	3
GLSEN, <i>The 2021 National School Climate Survey</i> 32 (2021)	20, 23
GLSEN, <i>School Climate for LGBTQ Students in West Virginia</i> (2019)	19, 20
Scott B. Greenspan, <i>LGBTQ + and Ally Youths’ School Athletics Perspectives: A Mixed-Method Analysis</i> , 16 J. LGBT YOUTH 403 (2019)	23
Pat Griffin, Nat’l Fed’n of St. High Sch. Ass’n, <i>Developing Policies for Transgender Students on High School Teams</i> (Sept. 8, 2015)	25, 26
Tyler Hatchel et al., <i>Minority Stress Among Transgender Adolescents: The Role of Peer Victimization, School Belonging, and Ethnicity</i> , 28 J. CHILD & FAMILY STUDIES 2467 (2019)	10

Michelle M. Johns et al., <i>Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts</i> , 68 MORBIDITY & MORTALITY WEEKLY REP. 67 (2019)	9
Jessica Matsuda, <i>Leave Them Kids Alone: State Constitutional Protections for Gender-Affirming Healthcare</i> , 79 WASH. & LEE L. REV. 1597 (2022)	19
Deana F. Morrow, <i>Social Work Practice with Gay, Lesbian, Bisexual, and Transgender Adolescents</i> , 85 FAMS. SOC'Y 91 (2004)	21
Valerie Moyer, <i>GSI Poll: So You Think You Know About Transgender Athletes...</i> , GLOB. SPORTS MATTERS (June 11, 2021)	26
Nat'l Women's L. Ctr., <i>Fulfilling Title IX's Promise: Let Transgender and Intersex Students Play</i> (June 14, 2022)	28, 29
Kristina R. Olson et al., <i>Mental Health of Transgender Children Who Are Supported in Their Identities</i> , 137 PEDIATRICS 1 (2016)	12, 24
Mary Papenfuss, <i>World Health Organization Removes Gender Nonconformity From List of Mental Disorders</i> , HUFFINGTON POST (May 31, 2019)	6
Ben Pickman & Brandon Griggs, <i>The World Health Organization Will Stop Classifying Transgender People as Mentally Ill</i> , CNN (June 20, 2018)	6
Sari L. Reisner et al., <i>Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center: A Matched Retrospective Cohort Study</i> , 56 J. ADOLESCENT HEALTH 274 (2015)	22

Scott Skinner-Thompson & Ilona M. Turner, <i>Title IX's Protections for Transgender Student Athletes</i> , 28 WIS. J.L. GENDER & SOC'Y 271 (2013).....	24
<i>Statement from Women's Rights And Gender Justice Organizations in Support of the Equality Act</i> (Mar. 17, 2021)	27, 28
<i>Statement of Women's Rights and Gender Justice Organizations in Support of Full and Equal Access to Participation in Athletics for Transgender People</i> (Apr. 2019)	27
Suzanne Le Menestrel & David F. Perkins, <i>An Overview of How Sports, Out of School Time, and Youth Well Being Can and Do Intersect</i> , 115 NEW DIRECTIONS FOR YOUTH DEV. 13 (2007)	22
Think Progress, <i>Transgender People Turned to Safety Hotlines in Doves in Response to Trump's Erasure Memo</i> (Oct. 30, 2018)	6
TransAthlete, <i>About Chris</i>	14
TransAthlete, <i>Policies by Organization</i>	26
The Trevor Project, <i>Get Help Now</i>	7
The Trevor Project, <i>National Survey on LGBTQ Youth Mental Health</i> (2022)	8, 9, 11
The Trevor Project, <i>Research Brief: Gender-Affirming Care for Transgender Youth</i> (Jan. 29, 2020)	24
The Trevor Project, <i>Research Brief: Mental Health of Black Transgender and Nonbinary Young People</i> (Feb. 2023)	11
The Trevor Project, <i>Spike in Crisis Contacts Related to Anti-Trans Rhetoric</i> (Aug. 2, 2017)	8

The Trevor Project, *Trainings for Youth-Serving Professionals*7

The Trevor Project, *TrevorSpace*7

U.S. DEP’T HEALTH & HUM. SERVS., THE NATIONAL YOUTH SPORTS STRATEGY (2019)21

U.S. Tennis Ass’n, *Transgender Inclusion Policy*25

USA Hockey, *USA Hockey Transgender Athlete Eligibility Policy*25

W. Va. H.B. 2007 (introduced Jan. 12, 2023 and passed legislature on Mar. 10, 2023)19

W.Va. H.B. 3001 (introduced Jan. 24, 2023).....19

W. Va. S.B. 103 (introduced Jan. 11, 2023)19

Erin C. Wilson et al., *The Impact of Discrimination on the Mental Health of Trans*Female Youth and the Protective Effect of Parental Support*, 20 AIDS AND BEHAVIOR 1 (2016)10

Women’s Sports Found., *Participation Of Transgender Athlete In Women’s Sports*.....26

INTEREST OF THE TREVOR PROJECT

Founded in 1998, The Trevor Project is the nation's largest lesbian, gay, bisexual, transgender, queer, and questioning ("LGBTQ") youth crisis intervention and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. Thousands of individuals use these services every month. By monitoring, analyzing, and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new insight, with clinical implications, on issues affecting LGBTQ youth.

The Trevor Project has a special interest in this litigation as well as familiarity and knowledge of the significant harms that transgender youth endure from state actions like West Virginia's House Bill 3293 ("H.B. 3293") that mandate discrimination against transgender youth. For decades, The Trevor Project has worked directly with transgender youth, many of whom struggle with the pain and stigma of being excluded from participating in school sports in a manner consistent with their gender identity. The Trevor Project is therefore acutely aware of the severe mental health effects that discrimination of this form can have on

transgender youth and thus can provide a critical perspective regarding the damaging results that will continue to flow from H.B. 3293 if this Court does not reverse the district court's decision.¹

¹ No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

Transgender people, meaning people whose gender identity² differs from their sex assigned at birth, have endured a long history of discrimination, which continues to this day. By categorically banning women and girls who are transgender—and many who are intersex—from participating in school sports in a manner consistent with their gender identity,³ H.B. 3293 will exacerbate this long history of discrimination. H.B. 3293 will effectively deny transgender women and girls the opportunity to participate in sports, police the bodies of high school children, and enforce stigmatizing and discriminatory rhetoric that transgender women and girls are not wanted in high school athletics—an activity that for many is a hallmark of their educational experience. Moreover, H.B. 3293 will harm cisgender women as well (especially women of color) by encouraging the policing of bodies that are not stereotypically feminine. And it

² The term “gender identity” refers to an individual’s “deeply felt, inherent sense of their gender.” *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 (9th Cir. 2019). An individual’s gender identity is durable and cannot be changed by medical intervention. See *GLAAD Media Reference Guide - Transgender*, GLAAD, <https://www.glaad.org/reference/transgender>. Cisgender individuals have a gender identity aligning with their sex assigned at birth. *Id.*

³ H.B. 3293 (codified at W. Va. Code § 18-2-25d).

will diminish the athletic experiences of cisgender student athletes in West Virginia, forcing them to compete on less diverse teams. H.B. 3293 harms *everyone*.

The Trevor Project is intimately aware of the potential harms associated with discriminatory policies like H.B. 3293 because The Trevor Project works firsthand with the youth affected by such policies. The Trevor Project has spent decades serving the LGBTQ community by providing direct services to youth through telephone, chat, and text platforms, where volunteers work directly to support LGBTQ youth. The Trevor Project developed these resources to prevent LGBTQ youth suicides and to provide mental health resources for LGBTQ youth. As a result of this work, The Trevor Project has developed a unique understanding of the harmful and lasting effects government-sponsored discrimination has on transgender youth. The Trevor Project's daily experiences with transgender youth, corroborated by years of research, confirm that denying transgender youth the opportunity to join sports teams aligned with their gender identity is a serious form of discrimination, which deprives transgender youth the physical, psychological, and

emotional benefits of school sports and sends a harmful message of stigmatization and exclusion.

The Trevor Project's research aligns with Plaintiff B.P.J.'s own experience. If the district court's decision is not reversed, H.B. 3293 will prohibit Plaintiff B.P.J. from participating in sports for her middle school. Plaintiff B.P.J. is passionate about sports and losing the opportunity to participate would not only take away an activity she loves but also harm her mental health, weaken her social network, and isolate her from her community. For Plaintiff B.P.J., like many transgender women and girls, excluding her from participation in sports prevents her from enjoying the emotional and physical benefits associated with the camaraderie of playing team sports. With transgender youth already facing high rates of depression, anxiety, and suicidality, it is of critical importance that this community be allowed to participate in sports and reap the same mental health benefits as their cisgender peers. It is therefore imperative that this Court reverse the district court's decision in order to protect transgender youth.

I. H.B. 3293 Places Transgender Women And Girls At Risk By Exacerbating The Discrimination They Face Just For Being Who They Are.

Contemporary science recognizes that being transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness.⁴ Despite this, the transgender community regularly experiences severe challenges and ongoing systemic discrimination. The Trevor Project's daily experiences with LGBTQ youth, corroborated by years of research, illuminate the detrimental impact of discriminatory laws and policies like H.B. 3293. LGBTQ youth in West Virginia and across the nation routinely contact The Trevor Project's crisis services expressing the heartbreaking effects of exclusion. The Trevor Project has seen increases in crisis contacts from transgender youth when harmful and disparaging rhetoric is used against their community.⁵

⁴ See, e.g., Ben Pickman & Brandon Griggs, *The World Health Organization Will Stop Classifying Transgender People as Mentally Ill*, CNN (June 20, 2018), <https://www.cnn.com/2018/06/20/health/transgender-people-no-longer-considered-mentally-ill-trnd/index.html>; Mary Papenfuss, *World Health Organization Removes Gender Nonconformity From List of Mental Disorders*, HUFFINGTON POST (May 31, 2019), https://www.huffpost.com/entry/transgender-right-world-health-organization-no-longer-mental-disorder_n_5cf0ade0e4b0e346ce7bbd93.

⁵ See, e.g., Think Progress, *Transgender People Turned to Safety Hotlines in Doves in Response to Trump's Erasure Memo* (Oct. 30, 2018),

The Trevor Project recognizes and attempts to heal the wounds caused by discrimination against the LGBTQ community by providing crisis intervention and suicide prevention services through telephone, chat, and text platforms.⁶ The Trevor Project also hosts a social networking site called TrevorSpace that allows LGBTQ youth to connect with one another.⁷ The Trevor Project provides comprehensive training for staff and volunteers who serve as counselors or moderators on its platforms so that they are prepared to help LGBTQ youth facing a difficult period and, if necessary, refer them to resources where they can receive help from mental health professionals.⁸

As a result, The Trevor Project is acutely aware of how detrimental and damaging discriminatory policies are to the transgender youth it serves. When elected officials use their platforms to attack or make

<https://archive.thinkprogress.org/trans-erasure-memo-causes-spike-calls-lgbtq-safety-hotlines-70508959958e/>.

⁶ The Trevor Project, *Get Help Now*, <https://www.thetrevorproject.org/get-help-now/>.

⁷ The Trevor Project, *TrevorSpace*, <https://www.trevorspace.org/>.

⁸ The Trevor Project, *Trainings for Youth-Serving Professionals*, <https://www.thetrevorproject.org/education/trainings-for-youth-servingprofessionals/>.

disparaging comments toward transgender people, The Trevor Project often sees a surge in crisis contacts from transgender youth.⁹

The Trevor Project has also documented the empirical impact of legalized discrimination on transgender youth. The Trevor Project's 2022 National Survey on LGBTQ Youth Mental Health gathered data on discriminatory policies and environments reported by nearly 34,000 LGBTQ individuals between the ages of 13 and 24.¹⁰ Nearly half of the respondents identified as transgender or non-binary.¹¹ It is one of the most diverse surveys of LGBTQ youth mental health ever conducted.

The Trevor Project's 2022 survey revealed a clear link between discrimination and risks to transgender youth. Notably, 83% of transgender and non-binary youth said that they have worried about transgender people being denied the ability to play sports because of state or local laws.¹²

⁹ The Trevor Project, *Spike in Crisis Contacts Related to Anti-Trans Rhetoric* (Aug. 2, 2017), https://www.thetrevorproject.org/trvr_press/spike-in-crisis-contacts-related-to-anti-trans-rhetoric/.

¹⁰ The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (2022), https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf [hereinafter, "Trevor Project National Survey"].

¹¹ *Id.* at 3.

¹² *Id.* at 14.

Further, 71% of transgender and non-binary youth reported being the subject of discrimination due to their gender identity¹³ and 37% of transgender and non-binary youth reported that they have been physically threatened or harmed due to their gender identity.¹⁴ Nearly half of transgender girls and women have seriously considered suicide in the past year, and 12% actually attempted suicide in the same period.¹⁵ These findings demonstrate the significant harms stemming from the deprivation of affirming school environments for a group that already faces widespread institutional and daily discrimination. External research corroborates The Trevor Project's findings and underscores the importance for inclusive sports environments for transgender athletes.¹⁶

¹³ *Id.* at 17.

¹⁴ *Id.* at 15.

¹⁵ *Id.* at 6.

¹⁶ See Jonah P. DeChants et al., “*I Get Treated Poorly in Regular School—Why Add To It?: Transgender Girls’ Experiences Choosing to Play or Not Play Sports*,” *TRANSGENDER HEALTH* (2022), <https://www.liebertpub.com/doi/10.1089/trgh.2022.0066>; Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts*, 68 *MORBIDITY & MORTALITY WEEKLY REP.* 67, 68 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf> (finding that approximately 27% of transgender students felt unsafe at school compared to 5% of cisgender males and 7% of cisgender females, resulting in more than half of transgender students reporting feeling sad and

Transgender students experience a greater incidence of emotional distress not because of their gender identity, but because of persistent discrimination by those around them.¹⁷ For example, a recent study found that 32% of transgender youth were exposed to victimization and that victimization alone predicted mental health issues such as missing school because of distress and suicidal ideation.¹⁸

The intersectional effects of discriminatory laws and policies like H.B. 3293 are also pervasive. The Trevor Project's latest research published in February 2023 found that Black transgender and non-binary youth reported nearly *double* the rate of having been physically threatened or harmed compared to Black cisgender LGBTQ youth and a

hopeless); Erin C. Wilson et al., *The Impact of Discrimination on the Mental Health of Trans*Female Youth and the Protective Effect of Parental Support*, 20 AIDS AND BEHAVIOR 1, 7–8 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5025345/> (detailing the negative impacts of social discrimination on transgender youth's health and wellbeing).

¹⁷ Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>.

¹⁸ Tyler Hatchel et al., *Minority Stress Among Transgender Adolescents: The Role of Peer Victimization, School Belonging, and Ethnicity*, 28 J. CHILD & FAMILY STUDIES 2467, 2471–73 (2019), <https://link.springer.com/article/10.1007/s10826-018-1168-3>.

staggering 77% of Black transgender and non-binary youth reported experiencing discrimination.¹⁹ Devastatingly, one in four Black transgender and non-binary youth reported a suicide attempt in the past year.²⁰

It should come as no surprise that support and acceptance, by contrast, benefit transgender youth significantly. For example, Black transgender and non-binary youth with high social support from friends had 39% lower odds of reporting a suicide attempt in the past year.²¹ Similarly, The Trevor Project's 2022 survey found that transgender and non-binary youth reported much lower rates of attempting suicide when they had a gender-affirming space at their school,²² and empirical research corroborates that supporting transgender youth in accordance with their gender identities is positively correlated with improved mental

¹⁹ The Trevor Project, *Research Brief: Mental Health of Black Transgender and Nonbinary Young People*, at 2 (Feb. 2023), https://www.thetrevorproject.org/wp-content/uploads/2023/02/EMBAR-GOED_2.28.23_The-Trevor-Project-Research-Brief_Black-TGNB-Youth-Mental-Health.pdf.

²⁰ *Id.* at 1.

²¹ *Id.* at 3.

²² Trevor Project National Survey, at 21.

health in those children.²³ Expectedly, “allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety.”²⁴ When transgender youth are supported by their families, “results provide clear evidence that transgender children have levels of anxiety and depression no different from their non-transgender siblings.”²⁵

Policies ensuring equal access to participation in sports are therefore vital in showing transgender students that their schools recognize their identities and value them as individuals. Reversing the district court’s decision is necessary to ensure that transgender youth in West Virginia are not deprived of the many benefits that flow from participating in sports.

II. The Trevor Project’s Data Reflect The Negative Effects Of Policies Denying Transgender Youth Access To The Benefits Of Participation On Sports Teams That Correspond With Their Gender Identity.

Over the past two decades, The Trevor Project has counseled hundreds of thousands of transgender youth who face discrimination at

²³ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS 1, 5 (2016).

²⁴ *Id.* at 5.

²⁵ *Id.* at 7.

school every day. In particular, many transgender youth feel stigmatized by policies barring them from joining sports teams aligned with their gender identity.

The Trevor Project maintains data about the people who use its crisis and suicide-prevention services. Many transgender students contact The Trevor Project in moments of crisis concerned about school sports.²⁶ Supervisors for The Trevor Project's crisis services report that sports-related issues come up regularly, as often as weekly.²⁷ These impressions are borne out by data collected on its telephone, chat, and text platforms, as dozens of transgender youth have reached out to The Trevor Project with specific concerns about participation in sports at their high schools.²⁸ Counselors often direct transgender students to websites providing resources for students, athletes, coaches, and administrators

²⁶ The information in this Section comes from anonymized data that The Trevor Project has collected, compiled, and reviewed on its telephone, chat, and text platforms as well as data collected as part of a 2020 survey about participation in sports. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

²⁷ *Id.*

²⁸ *Id.*

to find information about the inclusion of transgender athletes in sports.²⁹

Transgender youth regularly report that their participation in sports teams is integral to their lives and a source of positive energy.³⁰ Many students expressed that participating in sports built their self-esteem, created bonds with their peers, and supported their academic success.³¹ For one transgender student who had been kicked out of their home, participating in athletics provided a source of resilience and hope.³² Several other students who dealt with unsupportive parents found surrogate families on their teams.³³ One student said that their cross-country and track teammates “were basically the only friends [they] had.”³⁴ Another student explained how support from their coach helped them “alleviate gender dysphoria” and “stay healthy.”³⁵ Many students explained that playing sports improved their depression and

²⁹ See, e.g., TransAthlete, *About Chris*, <https://www.transathlete.com/about-chris>.

³⁰ *Supra* note 26.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

anxiety.³⁶ These benefits are particularly important given the severe mental health problems that transgender youth experience after they face discrimination. *See supra* Section I. H.B. 3293 would prevent transgender youth from experiencing those benefits.

Transgender students feel valued when treated fairly in sports but suffer emotional hardship when treated like they do not belong. Some transgender students worry about being bullied for participating in sports.³⁷ Transgender students hope to be judged for their contributions to their school sports teams, rather than for how well they meet traditional gender norms.³⁸ Despite earning their spots on their teams and working tirelessly during the off-season, several transgender students reported that they continually felt like they needed to prove themselves to their teammates just because they are transgender.³⁹ H.B. 3293 codifies the notion that transgender athletes do not belong on sports teams and legitimizes anti-trans bullying.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Even those transgender students who do participate on school teams often worry that their gender identity will hamper their athletic careers. Several students aspired to play sports in college, but feared that they would never be able to because of restrictions on transgender athletes.⁴⁰ One disabled transgender student said that they would have to give up on training for the Paralympic team because of the policies excluding transgender athletes.⁴¹ H.B. 3293 would mandate that transgender students in West Virginia give up their athletic ambitions.

Students also contacted The Trevor Project because they feared that they would suffer adverse treatment from their school and teammates if they were to come out as transgender.⁴² Several transgender students expressed concern that their playing time would be cut or that they would be kicked off their team.⁴³ One student also reported concern that they would be barred from athletics if they spoke to their high-school counselor about their mental health or gender identity.⁴⁴ Unfortunately, a number of transgender students said that transitioning would be the

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

end of their involvement in sports altogether.⁴⁵ For transgender girls like B.P.J. living in West Virginia, that fear would be borne out under H.B. 3293. The law would bar them from playing sports. And it would effectively out transgender students that have been able to participate in high school without revealing their transgender status.

While the fear of losing their team was agonizing for many transgender students, the pain of actually being excluded from participating on a team was even worse.⁴⁶ One student told a counselor that “the only thing[] that would ever make me any happier is if I got sports back” and that their sport “is the thing I loved most in the world.”⁴⁷ Another explained that playing sports helps them “to feel and be athletic, to spend time with a group that accepts me for who I am, to hear my chosen name being used frequently, to reaffirm my innate athleticism.”⁴⁸ H.B. 3293 deprives transgender students of the many benefits of sports—fitness, self-confidence, friendship, acceptance, support. Moreover, H.B. 3293 harms cisgender athletes as well. They lose the benefits of training

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

and playing with their transgender teammates, including learning how to work with people who have lived different lives and faced different challenges. Depriving cisgender students of those opportunities to learn and grow disadvantages them in an increasingly diverse world.

The common theme that The Trevor Project witnessed is that policies excluding transgender youth from equal opportunities in school sports send a message that transgender youth are unwanted and unwelcome in their school community. In the face of such policies, many transgender youth feel that their schools do not value them and do not want them to exist. Transgender youth must be allowed to participate in sports on the teams that reflect their gender identities, rather than fearing that government-sanctioned discrimination against them will incite their classmates or teachers to bully them and treat them without regard for their identity or dignity. These youth deserve the same respect, opportunities, and access to school sports as their peers.

III. The Trevor Project's Experiences Are Consistent With Social Science Research Conducted By Other Leading Organizations.

Researchers examining the effects of high school policies on transgender youth also found that exclusionary policies worsen the

health outcomes of transgender youth.⁴⁹ West Virginia is estimated to have the highest per capita rate of transgender youth in the country,⁵⁰ and West Virginia's transgender youth in particular are at risk of suffering immense harm from the elimination of affirming school environments.⁵¹ GLSEN's 2019 National Youth Climate Survey revealed that 83% of students in West Virginia schools heard negative remarks about transgender people.⁵² Further, over two-thirds of students were

⁴⁹ See, e.g., Almeida, *supra* note 17, at 1002.

⁵⁰ AP News, *WVU researchers collecting data on gender-diverse identities* (Aug. 9, 2022), <https://apnews.com/article/gender-identity-west-virginia-university-e583aef46949aaf452f8331f46907612>.

⁵¹ Since B.P.J. commenced her suit in May 2021, there has been an onslaught of anti-transgender laws introduced and enacted in West Virginia, including prohibiting teachers from being required to use a student's preferred pronouns if they are not consistent with the student's biological sex, barring minors from attending drag shows, and banning the use of gender-affirming care for transgender youth under the age of 18. See W.Va. H.B. 3001 (introduced Jan. 24, 2023); W. Va. S.B. 103 (introduced Jan. 11, 2023); W. Va. H.B. 2007 (introduced Jan. 12, 2023 and passed legislature on Mar. 10, 2023); see also Jessica Matsuda, *Leave Them Kids Alone: State Constitutional Protections for Gender-Affirming Healthcare*, 79 WASH. & LEE L. REV. 1597, 1609 (2022) (explaining how "[s]tates attempting to enact gender-affirming healthcare bans threaten to interrupt th[e] necessary care for transgender youth suffering from gender dysphoria . . . [and] pose an immense threat to the existence and quality of life of transgender youth").

⁵² GLSEN, *School Climate for LGBTQ Students in West Virginia* (2019), <https://www.glsen.org/sites/default/files/2021-01/West-Virginia-Snapshot-2019.pdf>.

prevented from using their chosen name or pronouns in school and only 7% attended a school that had a policy or official guidelines to support transgender and nonbinary students.⁵³ GLSEN's 2021 National School Climate Survey report also found that 16% of LGBTQ students had been prevented from playing on the sports team consistent with their gender identity.⁵⁴

In sharp contrast, institutional recognition of the importance of an individual's gender identity enhances the wellbeing of transgender youth.⁵⁵ GLSEN's 2021 National School Climate Survey found that transgender and non-binary students had a 74.1% lower likelihood of experiencing discrimination regarding participation on school sports teams if their school had a policy or guideline that allowed participation in school sports matching one's gender identity.⁵⁶ Athletic participation provides many positive health and psychosocial benefits to youth,

⁵³ *Id.*

⁵⁴ GLSEN, *The 2021 National School Climate Survey* 32 (2021), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

⁵⁵ *See, e.g.,* Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 116, 120 (2017).

⁵⁶ *See National School Climate Survey, supra* note 54, at 74.

including psychological resiliency, feelings of connectedness, and positive self-image.⁵⁷ A meta-analysis of prior research on the benefits of participation in sports found that the most commonly reported psychological and social health benefits were improved self-esteem, social interaction, and fewer depressive symptoms.⁵⁸ In particular, team sports were linked to improved health outcomes because of the social nature of the participation.⁵⁹ Allowing youth to take part in sports is particularly important in the context of school, as schools are “the primary social setting in which” youth make friends, learn social skills, and develop self-efficacy.⁶⁰

Studies also show a significant relationship between participation in

⁵⁷ See U.S. DEP’T HEALTH & HUM. SERVS., THE NATIONAL YOUTH SPORTS STRATEGY 49 (2019), https://health.gov/sites/default/files/2019-10/National_Youth_Sports_Strategy.pdf; Erin E. Buzuvis, *Transgender Student-Athletes and Sex-Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 SETON HALL J. SPORTS & ENT. L. 1, 46–47 (2011).

⁵⁸ Rochelle M. Eime et al., *A Systematic Review of the Psychological and Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health through Sport*, 10 INT’L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY 1, 13–16 (2013), <https://ijbnpa.biomedcentral.com/track/pdf/10.1186/1479-5868-10-98>.

⁵⁹ *Id.* at 16.

⁶⁰ Deana F. Morrow, *Social Work Practice with Gay, Lesbian, Bisexual, and Transgender Adolescents*, 85 FAMS. SOC’Y 91, 93 (2004).

sports and academic achievement.⁶¹ These benefits are particularly valuable for transgender youth, who face an elevated risk of isolation, harassment, and suicide.⁶²

Unfortunately, The Trevor Project's own data shows that transgender and non-binary youth had significantly lower rates of participation in sports compared to their cisgender LGBTQ peers. The decreased participation in sports by transgender and non-binary students is unsurprising, given the lack of institutional support by schools. In a recent study focused on LGBTQ youth, researchers found that students felt unsafe in school athletic contexts due to experiences of discrimination

⁶¹ See, e.g., Ryan D. Burns et al., *Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey*, 127 PERCEPTUAL & MOTOR SKILLS 448, 448 (2020), <https://journals.sagepub.com/doi/abs/10.1177/0031512519900055> (finding that adolescents participating in one or more sports teams throughout the past year also reported higher academic achievement compared with adolescents participating in zero sports teams); see also Suzanne Le Menestrel & David F. Perkins, *An Overview of How Sports, Out of School Time, and Youth Well Being Can and Do Intersect*, 115 NEW DIRECTIONS FOR YOUTH DEV. 13, 15 (2007).

⁶² See Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center: A Matched Retrospective Cohort Study*, 56 J. ADOLESCENT HEALTH 274, 274 (2015) (finding that transgender youth are at greater risk for negative mental health outcomes than cisgender youth), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4339405/>.

from their peers and inaction from athletic staff.⁶³ GLSEN's 2021 National School Climate Survey revealed that 58.9% of LGBTQ students reported experiencing LGBTQ-related discriminatory policies or practices at school, and 11.3% of LGBTQ students reported being prevented or discouraged from participating in school sports by school staff or coaches because they were LGBTQ.⁶⁴ Additionally, 61.6% of LGBTQ students reported feeling very uncomfortable talking with an athletic coach or physical education teacher about LGBTQ issues.⁶⁵

Yet, studies also show that institutional support of transgender youth has an immensely positive effect on their health and wellbeing. Research shows that transgender youth living in their affirmed gender, rather than their sex assigned at birth, had significantly lower rates of depression and higher self-worth compared to those who did not live in accordance with their gender identities.⁶⁶ In addition, transgender youth

⁶³ Scott B. Greenspan, *LGBTQ + and Ally Youths' School Athletics Perspectives: A Mixed-Method Analysis*, 16 J. LGBT YOUTH 403, 403 (2019), <https://www.tandfonline.com/doi/full/10.1080/19361653.2019.1595988?scroll=top&needAccess=true>.

⁶⁴ *National School Climate Survey*, *supra* note 54, at xvii.

⁶⁵ *Id.* at 52.

⁶⁶ See, e.g., Durwood, *supra* note 55, at 120 ("Our findings of normative levels of depression, slightly higher rates of anxiety, and high self-worth in socially transitioned transgender children stand in marked contrast

who socially transition and were living in their affirmed gender had rates of depression and anxiety that were comparable to their cisgender counterparts.⁶⁷ In line with these research studies, leading medical and mental health organizations stress the importance of a successful social transition to the health and wellbeing of transgender youth.⁶⁸

For many transgender youth, a key element of their successful social transition is the opportunity to participate on sports teams in a manner consistent with their gender identities.⁶⁹ H.B. 3293 will prohibit transgender women and girls from enjoying the myriad benefits that athletics provide, from physical and mental health to academic success.

with previous work with gender-nonconforming children who had not socially transitioned. Those studies overwhelmingly reported markedly higher rates of anxiety and depression and lower self-worth, with disproportionate numbers of children in the clinical range.”).

⁶⁷ *Id.*; see also Olson, *supra* note 23, at 4–5; see also The Trevor Project, *Research Brief: Gender-Affirming Care for Transgender Youth* (Jan. 29, 2020), <https://www.thetrevorproject.org/2020/01/29/research-brief-gender-affirming-care-for-youth/>.

⁶⁸ APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AM. PSYCHOLOGIST 832, 843 (2015); see also COMM. ON ADOLESCENCE, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 PEDIATRICS 198, 201 (2013).

⁶⁹ Scott Skinner-Thompson & Ilona M. Turner, *Title IX’s Protections for Transgender Student Athletes*, 28 WIS. J.L. GENDER & SOC’Y 271, 296 (2013).

IV. Leading National Sports Organizations Recognize The Importance Of Including Transgender Women And Girls And Of Not Policing Their Bodies.

Leading sports organizations across the country have also recognized the importance of maximizing the inclusion of transgender women and girls in sports and working to reduce barriers for transgender athletes.⁷⁰ At the high school level, administrators recognize the urgent need to include and support transgender athletes. Back in 2015, the National Federation of State High School Associations published an article describing the inclusion of transgender students on high school athletic teams as “a key issue across the country” in light of the “integral” role athletics play in extracurricular programs, and the role of sports in “developing positive self-esteem and a connection to school and community as well as a deterrent to the use of alcohol, drugs, tobacco or other unhealthy activities.”⁷¹ The article concluded that allowing transgender

⁷⁰ See, e.g., U.S. Tennis Ass’n, *Transgender Inclusion Policy*, <https://www.usta.com/en/home/about-usta/who-we-are/national/transgender-inclusion-policy.html>; USA Hockey, *USA Hockey Transgender Athlete Eligibility Policy*, https://cdn3.sportngin.com/attachments/document/8a0b-1766565/USA_Hockey_Transgender_Athlete_Eligibility_Policy.pdf?_ga=2.19077567.68179676.1548013415-499535307.1547832653.

⁷¹ Pat Griffin, Nat’l Fed’n of St. High Sch. Ass’n, *Developing Policies for Transgender Students on High School Teams* (Sept. 8, 2015),

students to participate according to their affirmed gender identity is “consistent with the educational values of equity and fairness for all students.”⁷²

Moreover, no major national athletic organization advocates banning all transgender women and girls from competing in a manner that affirms their gender identities, as H.B. 3293 attempts to do.⁷³ To the contrary, organizations serving youth and women in sports are continuing to revise and clarify their policies to ensure greater acceptance and participation for transgender athletes.⁷⁴

While the West Virginia legislature tries to justify its discriminatory and exclusionary law based on a purported solicitude for female

<https://www.nfhs.org/articles/developing-policies-for-transgender-students-on-high-school-teams/>.

⁷² *Id.*

⁷³ See TransAthlete, *Policies by Organization*, <https://www.transathlete.com/policies-by-organization>; see also Valerie Moyer, *GSI Poll: So You Think You Know About Transgender Athletes...*, GLOB. SPORTS MATTERS (June 11, 2021), <https://globalsportmatters.com/research/2021/06/11/transgender-athletes-poll-data-legislation-ohpi-global-sport-institute/> (in a demographically representative national survey, only 10% thought that transgender people should be banned from sports).

⁷⁴ See, e.g., Women’s Sports Found., *Participation Of Transgender Athlete In Women’s Sports*, <https://www.womenssportsfoundation.org/wp-content/uploads/2016/08/participation-of-transgender-athletes-in-womens-sports-the-foundation-position.pdf>.

athletes,⁷⁵ leading organizations devoted to promoting women and girls in sports have recognized the importance of including and accommodating transgender athletes. More than 20 organizations committed to women's rights, including the Tucker Center for Research on Girls & Women in Sport, Women Leaders in College Sports, and the Women's Sports Foundation, published a joint statement emphasizing their support for "the full inclusion of transgender people in athletics."⁷⁶ The organizations highlighted "their long history of advocating for fairness in sports and opportunities for all women to benefit from athletic participation," and noted that "harm to *all* women and girls" occurs when transgender women and girls are "denied opportunities to participate."⁷⁷

⁷⁵ W. Va. Code § 18-2-25d.

⁷⁶ *Statement of Women's Rights and Gender Justice Organizations in Support of Full and Equal Access to Participation in Athletics for Transgender People* (Apr. 2019), <https://nwlc.org/wp-content/uploads/2019/04/Womens-Groups-Sign-on-Letter-Trans-Sports-4.9.19.pdf>; see also *Statement from Women's Rights And Gender Justice Organizations in Support of the Equality Act* (Mar. 17, 2021), <https://now.org/media-center/press-release/statement-of-womens-rights-and-gender-justice-organizations-in-support-of-the-equality-act/> ("Girls and women who are transgender should have the same opportunities as girls and women who are cisgender to enjoy the educational benefits of sports, such as higher grades, higher graduation rates, and greater psychological well-being.")

⁷⁷ *Id.* (emphasis added).

Consistent with The Trevor Project’s own findings, these organizations underscored that “when transgender people are excluded from participation on teams that align with their gender identity, the result is often that they are excluded from participating altogether.”⁷⁸ In concluding, the organizations emphasized the need to “treat[] all people including transgender people, with fairness and respect.”⁷⁹

Studies have shown also that banning transgender women and girls from athletic participation often imposes a harm on cisgender women (particularly women of color)⁸⁰ and encourages the policing of bodies that fall outside of stereotypical notions of femininity.⁸¹ Natural body diversity is an inherent part of sports, and laws like H.B. 3293 that police the bodies of girls and women will lead to more stereotyping and

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Derrick Clifton, *Anti-Trans Sports Bills Aren’t Just Transphobic — They’re Racist, Too*, THEM (Mar. 31, 2021), https://www.them.us/story/anti-trans-sports-bills-transphobic-racist?_sm_au_=iHVRJ0jRLJLPvM7MFcVTvKQkcK8MG (underscoring that while most lawmakers could not name a single example of transgender girls competing in local sports, the one case many lawmakers cited was that of two young Black women who won 15 combined track championships in Connecticut between 2017 and 2019).

⁸¹ Nat’l Women’s L. Ctr., *Fulfilling Title IX’s Promise: Let Transgender and Intersex Students Play* (June 14, 2022), <https://nwlc.org/resource/trans-and-intersex-inclusion-in-athletics/>.

discrimination. Girls and women already have far fewer opportunities to play sports than boys and men do, which is precisely why Title IX was enacted—“to ensure that all students have equal access to education opportunities, *regardless of gender*.”⁸² The National Women’s Law Center has underscored that “Title IX’s bar on sex discrimination extends to protect the rights of transgender and intersex girls and women to play on school sports teams consistent with their gender identity.”⁸³

The clear consensus among organizations working on the frontlines to advance the interests of women and girls in sport is that reducing barriers to participation for transgender women and girls is an urgent priority, and allowing transgender women and girls to play on teams aligning with their gender identity is an essential step toward increasing participation and fairness for *all* women and girls. H.B. 3293 defies this consensus, increasing the exclusion and stigmatization that leading sports organizations are working to mitigate.

⁸² *Id.* (emphasis added).

⁸³ *Id.*

CONCLUSION

Transgender women and girls simply want the same acceptance and opportunities as their peers. Even for those transgender girls who may never join a sports team, benefits flow from knowing that their schools grant them this opportunity equally under the law. By excluding transgender women from participation in sports, H.B. 3293 demeans transgender youth and legitimizes prejudice against them. The experiences of The Trevor Project as well as the overwhelming consensus of mental health research demonstrate that discriminatory laws like H.B. 3293 place transgender girls and women at greater risk for mental health issues, including elevated rates of suicidality. For all these reasons, The Trevor Project asks this Court to reverse the district court's decision.

April 3, 2023

Shireen A. Barday
Mark C. Davies
PALLAS PARTNERS (US) LLP
75 Rockefeller Plaza
New York, NY 10019
(212) 970.2302
shireen.barday@pallasllp.com
mark.davies@pallasllp.com

Respectfully submitted,

/s/ Abbey Hudson
Abbey Hudson
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
ahudson@gibsondunn.com

Emily Maxim Lamm
Maxwell A. Baldi
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 955-8500
elamm@gibsondunn.com
mbaldi@gibsondunn.com

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certifies that this brief complies with the applicable typeface, type-style, and type-volume limitations. This brief was prepared using a proportionally spaced type (New Century Schoolbook, 14 point). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5,470 words. This certificate was prepared in reliance on the word-count function of the word-processing system used to prepare this brief.

/s/ Abbey Hudson
Abbey Hudson

GIBSON, DUNN & CRUTCHER LLP

Attorney for Amicus Curiae The Trevor Project

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Abbey Hudson

Abbey Hudson

GIBSON, DUNN & CRUTCHER LLP

Attorney for Amicus Curiae The Trevor Project